

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97M-170
71968

In Matter of)
)
JAMES A. KAY, JR.)
)
Licensee of one hundred fifty two)
Part 90 licenses in the)
Los Angeles, California area.)

WT DOCKET NO. 94-147

DISPATCHED

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FCC MAIL SECTION

ORDER

Issued: October 9, 1997 ; Released: October 14, 1997

The following procedures were set at the Prehearing Conference held on October 9, 1997.

Motion To Enlarge Issues

- October 24, 1997 - Kay's Opposition to Bureau's Motion
- October 31, 1997 - Bureau's Reply to Kay's Opposition

Motion To Compel

- October 24, 1997 - Kay's Opposition

Interrogatories

- October 24, 1997 - Kay's Answers and Objections (if any)

Kay's State Litigation

- October 24, 1997 - Counsel for Mr. Kay shall provide Bureau counsel with a list of persons who were deposed in the state litigation.¹

Bureau's Trial Witnesses

- October 24, 1997 - Bureau to identify trial witnesses and provide description of expected testimony.

¹ For each person identified as a deponent, the date of deposition(s) and the case name should also be provided.

October 31, 1997

- Deadline for serving Notices to Depose and Requests for Subpoenas for the Bureau's trial witnesses.

Inspection Report

It was reported by Bureau counsel that Mr. Kay cooperated at the inspections of his stations conducted by Bureau staff in California. As of this date, there has been no final Report prepared. Based on the anticipated Report, the Bureau is prepared to enter into a Stipulation to eliminate allegations of the Hearing Designation Order ("HDO") which are negated by the findings of the Report. In that way, the hearing may be streamlined by the elimination of unprovable fact issues which were mistakenly alleged in the HDO. There is no scheduled date for completing the Stipulation which will be received in evidence at the evidentiary admission session.

Kay's Trial Witnesses

After completion of the depositions of the Bureau's witnesses, Mr. Kay's counsel will know what to expect at trial. Counsel will be required to identify rebuttal witnesses at that time. The same procedures will be followed for the depositions of witnesses who will be called in Mr. Kay's defense case. It was suggested by the Presiding Judge that if any such rebuttal-type witnesses can now be identified, application should be made to the Presiding Judge for noticing their depositions at the time of the Bureau's depositions.

Status Reports

Counsel shall submit Status Reports to the Presiding Judge by the last business day of each month commencing in November, 1997.

Hearing Schedule

The following schedule was set.²

- | | |
|----------------|---|
| March 6, 1998 | - All Discovery Ends |
| April 3, 1998 | - Exchange of Bureau Exhs. w/Summaries of Testimony |
| April 17, 1998 | - Exchange of Kay Exhs. w/Summaries of Testimony |
| April 21, 1998 | - Submit Subpoenas |


² The parties should refer to earlier procedural rulings for instructions: Order FCC 95M-106 (April 17, 1995) and Order 97M-44 (March 27, 1997).

- May 1, 1998 - Exchange of Trial Briefs
- May 8, 1998 - Evidentiary Admissions Session,
Washington, D.C.
- May 12 - May 14, 1998 - Courtroom reserved in Washington, D.C. for
any testimony related to documents
- June 2 - June 12, 1998 - Los Angeles Hearing Session
- June 17 - June 20, 1998 - Washington, DC Hearing: Experts and
Mr. Kay

Future Discovery

The parties must disclose the identity of their respective experts in the November Status Report. Copies of curricula vitae and statements of summarized testimony as required under Rule 26(b)(4)(A) FRCP (substance of facts and opinions) must be exchanged at that time. The parties soon thereafter shall arrange for the depositions of the experts and the deposition of Mr. Kay at locations that are most convenient to the parties and their counsel.³

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Administrative Law Judge

³ Mr. Kay's deposition will be taken by Bureau counsel in the Los Angeles area unless Mr. Kay is willing or prefers to be deposed in Washington, D.C. The office or facility for the taking of the deposition shall be selected by Bureau counsel after consulting with counsel for Mr. Kay in an effort to reach a mutually agreeable arrangement.

⁴ Courtesy copies of this Order were faxed or e-mailed to counsel on date of issuance.